fore, since the action in Kansas was not barred — for the debtor was not in the jurisdiction — the case is correct. Moreover, it is supported by the weight of authority. *McCann* v. *Randall*, 147 Mass. 81.

LIMITATION OF ACTIONS — NEW PROMISE AND PART PAYMENT — DELIVERY OF CHECK PAYABLE IN FUTURE. — More than six years prior to the bringing of suit the defendant delivered to the plaintiff a check in part payment of an old obligation. By agreement between the parties the check was not presented and paid until a day less than six years before the action was commenced. *Held*, that the plaintiff's claim is barred by the Statute of Limitations. *Marreco* v. *Richardson*, 24 T. L. R. 624 (Eng., Ct. App., May 15, 1908).

A voluntary part payment revives an obligation barred by the Statute of Limitations, on the reasoning that the transaction involves a recognition of the debt and a promise to discharge it. *Cleave* v. *Jones*, 6 Exch. 573. The court here holds that the promise must be implied as of the date of delivery of the check, following a decision that a bill of exchange drawn for future payment is evidence of a promise made at the date of drawing only. *Gowan* v. *Forster*, 3 B. & Ad. 507. *Cf. Turney* v. *Dodwell*, 3 E. & B. 136; *Smith* v. *Ryan*, 39 N. Y. Super. Ct. 489. It seems clear that if a new promise is anywhere to be found, it must be implied from some affirmative act of the debtor. Such an act is the transfer of the check; its payment, on the other hand, is an act of the bank. To imply that the promise involved in the delivery continues and is therefore repeated at the moment of payment, would be to draw an implication from another implication, and that without any equitable basis. In refusing to adopt such a fiction the court seems eminently sound.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — ORDINANCE RATIFYING UNAUTHORIZED ACT OF MAYOR. — Under its charter a city could change street grades only by ordinance. The defendant, who was mayor of the city, in pursuance of a resolution of the council, changed a street grade near the alley upon which the plaintiff's property abutted, rendering it unaccessible to vehicles. An ordinance authorizing the change was passed some time after. *Held*, that the defendant is liable for damage done previous to the passing of the ordinance. *Faust* v. *Pope*, 111 S. W. 878 (Mo.).

The plaintiff had a right to have the street kept open for the benefit of his property. *Longworth* v. *Sevedic*, 165 Mo. 221. Unless justified by the subsequent ordinance, the change in grade without proper authorization was a trespass for which the mayor is liable as an individual. *Reed* v. *Peck*, 163 Mo. 333. A municipal corporation has certain powers conferred upon it, which must be performed in the manner prescribed. *Cross* v. *Morristown*, 18 N. J. Eq. 305. Since grading could be authorized only by ordinance, any grading not so done was *ultra vires* and incapable of ratification; for otherwise the express power granted by charter would be disregarded. *Page* v. *Belvin*, 88 Va. 985. A recent decision which permits ratification may be distinguished on the ground that in it the city council was empowered to grade without the authorization of an ordinance. *Wolfe* v. *Pearson*, 114 N. C. 621. Even then the decision might be assailed on the ground that ratification should not be permitted when to do so would deprive a third party of a vested right of action. *Bird* v. *Brown*, 4 Exch. 786. The principal decision, then, seems clearly correct.

QUASI-CONTRACTS — MONEY PAID UNDER DURESS OR COMPULSION OF LAW — PAYMENT TO PUBLIC SERVICE CORPORATION. — The plaintiff with full knowledge of the facts, and without fraud on the defendant's part, voluntarily paid to the defendant telephone company an excessive charge. The plaintiff sued for the overpayment. *Held*, that the mere fact that the defendant is a public service corporation does not constitute such compulsion as to allow a recovery. *Illinois Glass Co.* v. *Chicago Telephone Co.*, 85 N. E. 300 (Ill.). See NOTES, p. 52.

REPLEVIN — STATUTORY REDELIVERY BOND — ACCIDENTAL DESTRUCTION OF PROPERTY BEFORE VERDICT. — The defendant, in an action of re-

plevin, executed a statutory redelivery bond and retained possession of the property. Through no fault of the defendant the property was destroyed by fire. The court then found the issues in the replevin suit for the plaintiff. *Held*, that the plaintiff is entitled to the full value of the property. *Bradley* v. *Campbell*, 111 S. W. 514 (Mo.).

The weight of authority supports this decision. *Hinkson* v. *Morison*, 47 Iowa 167; *George* v. *Hewlette*, 12 So. 855 (Miss.). *Contra*, *Pope* v. *Jenkins*, 30 Mo. 528. Opposing decisions are based on the rule that if the condition of a bond becomes impossible of performance by act of God, the penalty is saved. The application of this rule to a case like the present is specious, for it makes no distinction between the liability of a wrongdoer and that of a mere bailee. It is just that a bailee should be excused by the accidental destruction of the subject matter of the bailment. *U. S.* v. *Thomas*, 15 Wall. (U. S.) 337. But where there is a precedent wrong, and the obligor's liability does not rest wholly upon the contract, he should bear the loss of the property. The defendant in the principal case was a wrongdoer, for he was holding the plaintiff's property against the latter's will. He should not be allowed to keep such property at the owner's risk, for he has deprived him of the opportunity of disposing of it pending the litigation.

TAXATION — WHERE PROPERTY MAY BE TAXED — OPEN ACCOUNTS TAXED AT DEBTOR'S DOMICILE. — A Connecticut insurance company conducted business in Louisiana through an agent. The company extended no credit to its customers, but on delivery of each policy a debt arose from the agent to the company for the amount of the premium. *Held*, that the debt is taxable in Louisiana. *National Fire Ins. Co.* v. *Board of Assessors*, 46 So. 117 (La.).

This case is contrary to many early decisions in Louisiana, but follows the more recent trend of judicial decision in that state, and in others, to tax debts and *choses in action* at the domicile of the debtor. The court, by this decision, extends the doctrine for the first time in Louisiana to open accounts not represented by some tangible document. For a discussion of the principles involved, see 15 HARV. L. REV. 680; 20 *ibid.* 656.

TENANCY IN COMMON — PURCHASE BY ONE TENANT AT FORECLOSURE SALE OF COMMON PROPERTY. — After the death of a mortgagor of land the property was purchased by one of the heirs at the foreclosure sale. *Held*, that he holds the title free from any trust in favor of his co-heirs. *Jackson* v. *Baird*, 61 S. E. 632 (N. C.).

The case is opposed by virtually all American authority. *Savage* v. *Bradley*, 149 Ala. 169; *Moy* v. *Moy*, 89 Iowa 511. But on principle the decision seems unassailable. It is, indeed, established law in the United States that co-tenants stand in a fiduciary relation to one another, and that the purchase by one co-tenant of an encumbrance on the common estate inures to the benefit of all who elect to contribute their shares of the purchase price. *Van Horne* v. *Fonda*, 5 Johns. Ch. (N. Y.) 388. The basis of the doctrine is that it is inequitable for one co-tenant to obtain a title adverse to his fellows. In the principal case, however, the co-tenancy itself has ceased through the sale, and each has an equal chance to buy back. *Sutton* v. *Jenkins*, *supra*. And the case is clearly distinguishable from repurchase by a co-tenant at a tax sale, which revives the co-tenancy, on the general ground that purchase by any one under a legal duty to discharge the obligation to the state operates as a simple payment of the tax. *Delashmutt* v. *Parrent*, 39 Kan. 548. The English doctrine that there is no fiduciary relation between co-tenants seems preferable. *Kennedy* v. *de Trafford*, [1897] A. C. 180. See 9 HARV. L. REV. 427.

TORTS — LIABILITY OF A COUNTY — INJURY TO PROPERTY RIGHTS. — A county employee, while repairing a road, negligently diverted a watercourse which destroyed the plaintiff's house. *Held*, that the county is liable. *Matsumura* v. *County of Hawaii*, 19 Haw. 18. See NOTES, p. 54.

VENDOR AND PURCHASER — REMEDIES OF PURCHASER — VENDEE'S LIEN AFTER RESCISSION. — After paying part of the purchase price on an executory